IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

I.T.A. No.560 of 2006
Date of Decision:18.04.2007

The Commissioner of Income-tax, Karnal

.....Appellant

Vs.

Shri Ramesh Bhayana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Yogesh Putney, Advocate for the revenue.

****

RAJESH BINDAL, J.

The revenue has approached this Court by filing the present appeal, raising the following substantial questions of law, arising out of order dated 3.2.2006, passed by the Income Tax Appellate Tribunal, Delhi Bench `C' , New Delhi (for short, `the Tribunal'), in I.T.A. No.I.T.A.(SS) No.7 (Del.)/ 2001, for the block period 1988-89 to 1998-99:-

> "1. Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in confirming the order of the CIT(Appeals) in deleting the addition of Rs.21,00,094/- made by the Assessing Officer on account of unexplained investments made by the assessee in the purchase of plots, properties and construction of house on the basis of seized documents?
>
> 2. Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in confirming the order of the CIT (Appeals) in deleting the addition of Rs.1,49,000/- made by the Assessing Officer on account of unexplained investment in the purchase of jewellery?

Briefly, the facts as noticed in the orders passed by the authorities below, are that the search and seizure operation was carried out at the business and residential premises of the assessee. During the course of search, certain incriminating documents were found and seized. While

framing assessment for the block period, certain additions were made on various accounts, which were either set aside by the Commissioner of Income Tax (Appeals) (for short, `the CIT(A)') or by the Tribunal.

In the present appeal, the revenue is aggrieved against the order passed by the Tribunal whereby it had upheld the order of CIT(A) deleting the additions made by the Assessing Officer on account of alleged unexplained investment in the purchase of plots, properties, construction of house and purchase of jewellery. Counsel for the revenue has argued that the findings recorded by the Tribunal on these issues are perverse as the relevant material has not been considered. As far as issue of alleged unexplained investments made in the purchase of plots, properties and construction of house are concerned, the Tribunal while concurring with the view expressed by the CIT(A) found that the assessee and his wife were income tax assessees for a long time even prior to the block period. Accordingly, the position reflected and the income shown by both the assessees cannot be brushed aside. The position sought to be explained by the assessee by filing the returns for the block period cannot be said to be `Make Belief Statement of Affairs'. The assessee had also provided information and also furnished affidavits of the persons from whom he had raised loans/ advances, some of whom were assessed to tax. Neither these affidavits were controverted nor the persons were examined by the Assessing Officer. Under these circumstances, the Tribunal upheld the view expressed by the CIT(A) deleting the addition on this account.

Learned counsel appearing for the revenue could not point out any other material on record which could enable this Court to opine that the view expressed by the Tribunal was not a possible view in the facts and circumstances of the case and evidence on record.

With regards to addition on account of alleged investment in the purchase of other valuables is concerned, the Tribunal followed an earlier order passed by it in the case of one Daulat Ram wherein it was held that in case the explanation of the assessee was to be disbelieved, the Assessing Officer should have some material to rebut the same. Mere conjectures and surmises cannot form basis for making additions. A circular issued by the Central Board of Direct Taxes bearing No.347(E) dated 20.5.1978 was also relied upon. On this account also, counsel

appearing for the revenue could not raise any arguments worth consideration which could result in holding that the view expressed by the Tribunal is perverse.

Accordingly, we do not find any substantial question of law arises in the present appeal and the same is dismissed.

(RAJESH BINDAL)
JUDGE

April 18, 2007 **(M.M.KUMAR)**
renu **JUDGE**